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to the ends of justice." This section has been repeatedly before the courts for construction and it has been held that an action for damages against a receiver appointed by a federal court may be brought in a state court and its judgment will be conclusive as to the justice and amount of the claim, the federal court, however, having jurisdiction to regulate the time and manner of its satisfaction in the interests of all the creditors. *Dillingham v. Hawk*, 9 C. C. A. 101, 60 Fed. Rep. 494; *Gableman v. Ry. Co.*, 179 U. S. 335. And the case may not be removed to the federal court at the request of the receiver on the sole ground of his appointment by that court. *Gableman v. Ry. Co.*, *supra*; *Bausman v. Dixon*, 173 U. S. 113; *Pope v. Ry. Co.*, 173 U. S. 573. But whether a receiver appointed by a federal court may be enjoined in a state court is a question which, so far as we have been able to find, has not been before the United States courts. In Wisconsin, the jurisdiction of the state court to enjoin a federal receiver from interfering with the property of the plaintiff which has been taken under defective condemnation proceedings has been upheld. *Stoltz v. Ry. Co. et al.*, 104 Wis. 47, 80 N. W. Rep. 68. In a very recent Wisconsin case, however, an action brought by the Attorney-General to enjoin a federal receiver from tearing up and selling the rails in pursuance of an order of the federal court in foreclosure proceedings, it was held that upon application of the receiver the case must be transferred to the federal court. *State v. Frost, Receiver*, 113 Wis. 623. This case was very carefully considered and seems to be in line with the principal case.

DAMAGES—AUTOMOBILES—FRIGHTENING HORSES—EXCESSIVE SPEED.—Plaintiff's horse was frightened by the approach of defendant's automobile, which was traveling at high speed and making a great noise. The evidence showed that defendant must have observed that plaintiff's horse was becoming excited and unmanageable; that nevertheless he did not for some moments after this had become known to him slow up his machine. The plaintiff recovered damages in the lower court and the defendant appealed. *Held*, that the judgment be affirmed. *Shinkle v. McCullough* (1903),—Ky.—, 77 S. W. Rep. 196.

The court lays down the rule that while automobiles are a lawful means of conveyance, and have equal rights upon the public roads with horses and carriages, their use should be accompanied with such degree of prudence in management and such consideration for the rights of others, as are consistent with their safety. If, as the jury found by their verdict, the defendant knew or could by the exercise of ordinary care, have known, that the machine in his possession and under his control had so far excited plaintiff's horse as to render him dangerous and unmanageable, it was his duty to have stopped his automobile and taken such other steps for plaintiff's safety as ordinary prudence might suggest. The decisions in this case and in the similar case of *Thies v. Thomas*, 77 N. Y. Supp. 276, indicate that the tendency of the courts is in the direction of exacting a high degree of care from owners and occupants of automobiles.

DAMAGES—MENTAL SUFFERING PRODUCED BY FRIGHT.—By reason of negligence, certain railway cars belonging to defendant were backed off the track directly towards and to a point within fifteen feet of plaintiff's residence. Plaintiff was at the time in her residence and the occurrence caused her great fright, producing nervous prostration and physical disability. She alleged gross negligence on the part of defendant, who in reply entered a general demurrer. *Held*, that no cause of action had been stated. *Morse v. Chesapeake & Ohio Ry. Co.* (1903),—Ky.—, 77 S. W. Rep. 361.

The court in this case takes the ground that in an action for persona

injuries based on negligence,—where such negligence has been accompanied by no contemporaneous injury to person or property, or where the injuries are not resultant upon some contract relation between the parties,—no recovery for mental suffering merely, is admissible. This decision appears to be in accord with the weight of authority in such cases. *Mitchell v. Rochester Ry. Co.* 151 N. Y. 107, 45 N. E. 354, 34 L. R. A. 781, 56 Am. St. Rep. 604; *Ewing v. Ry. Co.*, 147 Pa. St. 40, 23 Atl. Rep. 340; *Canning v. Williamstown*, 1 Cush. 451. Contra, *Mack v. R. R. Co.*, 52 S. C. 323, 29 S. E. Rep. 905, 40 L. R. A. 679, 68 Am. St. Rep. 913; *Purcell v. St. Paul R. R. Co.*, 48 Minn. 134, 50 N. W. Rep. 1034; *Gulf, Etc., R. R. Co. v. Hayter*, 93 Texas 193, 77 Am. St. Rep. 860. SHEARMAN & REDFIELD ON NEGLIGENCE, 5th ed., § 761, state the better rule to be that damages for mental anguish caused by fright alone may be recovered in such cases, only where gross or wilful negligence is proved. The decision in this case is of especial interest as it is the first decision, upon this particular point, of the Kentucky court, which had in previous cases followed the doctrines of *So. Relle v. Telegraph Co.*, 55 Tex. 308, 40 Am. Rep. 805, wherein damages for mental anguish alone, in the so-called telegraph cases, were allowed. See 2 MICHIGAN LAW REVIEW. pp. 150, 226.

EJECTMENT—EVIDENCE—NEGLIGENCE—The American Telephone & Telegraph Company having for some time maintained their lines over and along the property of one Wilcox and desiring to acquire a right to do so, presented to said Wilcox a sealed instrument, which the agent of the company said was a receipt for one dollar to pay for the damage which had been done to a tree belonging to Wilcox. This receipt was in fact an instrument giving the company right to maintain poles on land of the plaintiff. Wilcox signed it without reading it. Discovering the fraud he brings suit in ejectment and to recover damages. *Held*, that the negligence of Wilcox in not reading the instrument did not bar him from showing the fraud of defendant, and, moreover, that Wilcox had a right in a court of law to show fraud as a defense to the deed. *Wilcox v. American Telephone and Telegraph Company* (1903), —N. Y.—68 N. E. 153.

The decision in this case is in accord with former cases decided in New York. *Albany City Savings Institution v. Burdick*, 87 N. Y. 40, *Smith v. Smith*, 134 N. Y. 62, and indicates a broader view than that taken in some cases; for example *Commissioners v. Younger*, 29 Cal. 172; *Bacon v. Markley*, 46 Ind. 116; *Administrator v. Gerson*, 13 Wall (U. S.) 383, which hold that even between the original parties to a transaction the party who has been negligent cannot show fraud in the other.

ELECTIONS—MARKING OF BALLOTS.—The Michigan statute provides, (Public acts of 1901, No. 214, Sec. 26), "Where only one candidate is to be elected to an office, and the elector wishes to vote for a candidate not on his party ticket, he should make a cross in the circle under the name of his party, and also make a cross in the square before the name of the candidate for whom he desires to vote on the other ticket. In such case it shall not be necessary to strike off the name of the candidate on the party ticket. If the elector wishes to vote for a candidate not on any ticket, he must write or place the name of such candidate on his ticket opposite the name of the office, and make a cross in the circle under the party name." Where an elector, having placed a cross in the circle under his party name, then erased the name of the candidate of his party for supervisor, and wrote in the name of the candidate of the opposing party, which was already printed upon the ticket, *Held*, that such vote could not be counted for the candidate whose